

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Teacher Retirement System

Department Administration

Contact Jennifer Liwo E-mail jenniferl@artsr.gov Phone 501-682-1517

Statutory Authority for Promulgating Rules §§ 24-7-301 and 24-7-305 (b)

Rule Title: Rule 13-1: Administration Adjudications: Staff Determination and Appeals

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

12/21/2023

01/22/2024

03/14/2024

02/05/2024

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Tammy Porter

tammyp@artsr.gov

06/27/2024

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-588-4367

markw@artsr.gov

Phone Number

E-mail Address

EXECUTIVE DIRECTOR

Title

06/27/2024

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Legal

BOARD/COMMISSION Arkansas Teacher Retirement System

PERSON COMPLETING THIS STATEMENT Jennifer Liwo

TELEPHONE NO. (501) 682-1517 **EMAIL** jenniferl@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rule 13-1: Administration Adjudications: Staff Determinations and Appeals

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation? n/a

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00

n/a

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

n/a

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

ATRS Rule 13
Administrative Adjudications and Informal Resolutions: Staff
Determinations and Manifest Injustice Referrals

§ 13-101. Definitions.

As used in this rule:

(1) "Manifest injustice" has the same meaning as provided in Arkansas Code § 24-7-202; and

(2) "Member" for the purposes of the staff determination and appeal process means any member of the Arkansas Teacher Retirement System as defined in Arkansas Code § 24-7-202 and includes:

- (A) A beneficiary of a member;
- (B) A retiree of the system;
- (C) A guardian, an administrator, or an executor of a member, retiree, or beneficiary; or
- (D) A public school.

§ 13-102. Staff determinations — Scope and purpose.

(a) This rule governs the practice and procedures of the Arkansas Teacher Retirement System concerning the adjudication of a claim that concerns any retirement plan or program administered by the system and arises as a result of a determination made by the staff or administration of the system.

(b)(1) The system's staff is responsible for administering the accounts of members of the system and may make determinations based on the law and rules applicable to the system that may be adverse to a member's claim.

(2) This rule outlines the procedure for a member to appeal the determination of the system's staff or administration concerning a claim of the member.

(c)(1) The rules concerning the staff determination and appeal process should be read in conjunction with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) To the extent that the rules concerning the staff determination and appeal process conflict with the Arkansas Administrative Procedures Act, the terms and provisions of the Arkansas Administrative Procedures Act shall supersede the rules concerning the staff determination appeal process and control.

(d) The rules concerning the staff determination and appeal process do not apply to claims or causes of action that the system or the Board of Trustees of the Arkansas Teacher Retirement System may have against a member or any other person or entity, regardless of the origin or nature of the claim.

§ 13-103. Staff determinations — Extension of deadlines.

(a)(1) The Board of Trustees of the Arkansas Teacher Retirement System and the Executive Director of the Arkansas Teacher Retirement System may extend any deadline applicable to a member's appeal upon a showing of good cause unless a Hearing Officer has been assigned.

(2) Only the board may extend a deadline after the deadline has passed.

(3) If a hearing officer has been assigned, until the completion of the hearing, only

the hearing office may extend a deadline applicable to a member's appeal upon a showing of good cause.

(b) When compliance with the rules concerning the staff determination and appeal process is based on delivery having occurred, delivery shall be considered to have occurred on the earlier of either the:

- (1) Date of the postmark, if posted with the United States Postal Service;
- (2) Date of actual delivery by one of the following methods:
 - (A) Hand delivery;
 - (B) Electronic transmission; or
 - (C) Delivery service other than USPS.

§ 13-104. Staff determinations — Informal resolutions.

(a)(1) A member's claim may be resolved informally through correspondence or conference between the member and the staff of the Arkansas Teacher Retirement System.

(2) All reasonable efforts shall be made to informally resolve a member's claim with the member.

(b)(1) The executive director may implement a resolution of a member's claim that has a direct impact to the system of up to five thousand dollars (\$5,000).

(2) Board approval shall be required to implement a resolution that has a direct financial impact to the system in excess of five thousand dollars (\$5,000).

(c)(1) The system's staff and the member are strongly encouraged to engage in a good faith attempt to resolve claims informally based upon the proper application of the law, rules, and policies applicable to the system and to the specific facts of the member's claim.

(2) A member's claim shall not be resolved in a manner that contravenes the law, rules, and policies applicable to the system.

(d) If a claim is not resolved informally and a staff determination letter adverse to the member's claim is issued to the member, the member may request a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System.

(e) The manifest injustice referral process shall not be used with regard to a member if the manifest injustice referral concerns the same questions of the law and fact that are at issue in a claim concerning the member that is resolved through the staff determination and appeals process.

§ 13-105. Staff determinations — Notice of adverse determination.

(a)(1) If the staff of the Arkansas Teacher Retirement System make a determination that is adverse to a member's claim, the system shall send a staff determination letter to the member if the claim involves:

(A) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(B) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(C) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(2) A staff determination letter shall not be issued to a member unless the staff determination letter has been reviewed and approved by an attorney for the system.

(b) A staff determination letter that is issued to a member shall:

(1) Advise the member of the determination and the reasons for the determination; and

(2) Advise the member of the procedure for requesting a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System;

(3) Advise the member of the deadline to request a review by the executive director; and

(4) Not include findings of fact and conclusions of law, separately stated.

(c) The written determination of system staff concerning an overpayment collection dispute or the applicability of a salary limitation to a plan or payment shall be treated as a staff determination letter.

(d) A staff determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(e) The system shall consider a member's claim as closed if the member does not request a review of the staff determination by the executive director within thirty (30) calendar days of the date of the staff determination letter.

§ 13-106. Staff determinations — Review by executive director.

(a)(1) A member shall submit a request for a review of a staff determination by the Executive Director of the Arkansas Teacher Retirement System in writing.

(2) A member shall not be required to resubmit any documents or information with his or her request for a review.

(b)(1) Unless an extension is granted by the Board of Trustees of the Arkansas Teacher Retirement System or the executive director, a member shall not be permitted to request a review of a staff determination by the executive director unless the member's request is received by the Arkansas Teacher Retirement System within thirty (30) calendar days of the date of the staff determination letter.

(2) If the last day to request a review of a staff determination by the executive director falls on an official state holiday or weekend, the member shall have until the next business day to request a review.

(c)(1) The executive director shall promptly send a letter to the member acknowledging the member's request for a review.

(2)(A) The member may submit for review by the executive director any additional relevant documents or information not previously submitted by the member to the system.

(B) The member shall submit the additional documents and information to the executive director within thirty-five (35) calendar days of the date of the executive director's acknowledgement letter.

(d)(1) Upon receiving a member's request for a review of a staff determination, the executive director shall independently review the facts and the law, rules, and policy applicable to the member's claim.

(2) The executive director shall consider the staff determination as well as any relevant documents and information provided by the member.

(3) The executive director may affirm, reverse, or modify the staff determination

before a final determination on the member's claim is made by the board.

(e)(1) The executive director shall send a review determination letter to the member within ninety (90) calendar days from the date on which the member's request for a review was received by the system.

(2) A review determination letter shall:

(A) Advise the member of the determination and the applicable law, rules, and policy used by the executive director to reach his or her determination;

(B) Advise the member of the procedure for appealing the review determination letter to the board;

(C) Advise the member of the deadline to appeal the review determination letter to the board; and

(D) Not include findings of fact and conclusions of law, separately stated.

(f) A review determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(g) The system shall consider a member's claim as closed if the member does not appeal the executive director's review determination within thirty (30) calendar days of the date of the review determination letter.

§ 13-107. Staff determinations — Appeals — Initiation of appeal to the Board of Trustees of the Arkansas Teacher Retirement System.

(a) A review determination of the Executive Director of the Arkansas Teacher Retirement System may be appealed by the member to the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) A member shall appeal a review determination of the executive director in writing by filing a signed notice of appeal with the Arkansas Teacher Retirement System in the manner required by the system.

(2) A member shall file his or her signed notice of appeal with the system within thirty (30) calendar days of the date of the review determination letter.

(c) A member shall address and deliver his or her signed notice of appeal to the Board of Trustees of the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

§ 13-108. Staff determinations — Appeals — Assignment of hearing officer.

(a)(1) All member appeals of a review determination shall be assigned to a hearing officer.

(2) The executive director or his or her designee shall appoint a hearing officer from a list of qualified individuals approved by the executive director.

(3) The hearing officer shall conduct an administrative hearing, recommend factual and legal determinations, and prepare a proposed order for the board that includes findings of fact and conclusions of law, separately stated.

(b)(1) Following appointment, the hearing officer shall issue a written scheduling order to the member, executive director, and legal counsel for the system.

(2) The scheduling order shall contain include all information required under the Arkansas Administrative Procedures Act, § 25-19-201 et seq.

(3) The hearing officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and

related materials before the hearing, including without limitation, any requested proposed findings of fact and conclusions of law.

(4) The hearing officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record.

(c) Unless otherwise ordered, hearings shall be held at the Arkansas Teacher Retirement System, 1400 West Third Street, Little Rock, Arkansas 72201.

§ 13-109. Staff determinations — Appeals — Filing documents.

(a) Following the appointment of a hearing officer, all correspondence, documents, requests, submissions, filings and other documents relating to an appeal shall be mailed or hand delivered to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(b) Any party submitting or filing a document relating to an appeal shall simultaneously deliver a copy of the filing or document to the opposing party or, if applicable, opposing counsel.

(c) The Arkansas Teacher Retirement System shall be the responsible for ensuring that:

(1) Copies of all correspondence, documents, requests, submissions, filings, and other documents relating to an appeal are provided in a timely manner to the hearing officer; and

(2) A complete record of each appellate proceeding before a hearing officer and the Board of Trustees of the Arkansas Teacher Retirement System is prepared and maintained in a single, centralized location.

§ 13-110. Staff determinations — Appeals — Hearings.

(a) The hearing is an administrative hearing before the hearing officer and is not a hearing before the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) All hearings shall be conducted according to the rules concerning the staff determination appeal process and the corresponding procedural provisions of the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) The hearing shall be informal and the formal rules of evidence shall not apply.

(3) In conducting a hearing, the hearing officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the board.

(c) A member shall at all times have the right to counsel, provided that such counsel:

(1) Is duly licensed to practice law in the State of Arkansas; or

(2) Has been granted permission to appear *pro hac vice* by the hearing officer.

(d)(1) All hearings shall be conducted in an orderly manner.

(2) The hearing officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses who are not under examination.

(e) If a member fails to appear at the hearing, the member waives his or her right to present evidence and arguments to the hearing officer and the hearing officer may proceed with the hearing and prepare a proposed order for the board's consideration based on the evidence presented.

(f) The hearing officer shall have the authority to administer oaths and affirmations.

(g)(1) Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding.

(2) The hearing officer may question a witness during any portion of the direct or cross-examination of the witness.

(3)(A) Before giving testimony, each witness shall swear or affirm that the testimony about to be given shall be the truth, the whole truth, and nothing but the truth.

(B) All testimony considered by the hearing officer, except for matters officially noticed or entered by stipulation, shall be sworn testimony.

(h)(1) The hearing officer may admit into the record any evidence that in his or her judgment:

(A) Has a reasonable degree of probative value and trustworthiness; or

(B) Is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs.

(2) The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Objections to evidentiary offers may be made and shall be noted of record.

(4) Documents received into evidence by the hearing officer shall be marked and filed as part of the record.

(i) Following the close of evidentiary submissions and witness testimony, the hearing officer may in his or her discretion allow summations and closing arguments by the parties.

(j)(1) The Arkansas Teacher Retirement System shall arrange for a court reporter to attend and record all hearings.

(2)(A) The system shall pay the cost for preparing a transcript of the hearing.

(B) Upon receiving the hearing transcript, the system shall promptly forward a copy of the transcript to the hearing officer and the member or, if applicable, the member's counsel.

§ 13-111. Staff determinations — Appeals — Post-hearing briefs.

(a)(1) Upon the completion of the hearing, the hearing officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal.

(2) The decision on whether or not to allow the submission of post-hearing briefs is within the sole discretion of the hearing officer.

(3) A hearing officer's decision to not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board of Trustees of the Arkansas Teacher Retirement System.

(b) If a hearing officer grants the member or the Arkansas Teacher Retirement System an opportunity to submit a post-hearing brief, the hearing officer shall provide the opposing party an opportunity to submit a response.

(c) The hearing officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) calendar days from the date of receipt of the hearing transcript before any initial post-hearing brief shall be due for filing.

§ 13-112. Staff determinations — Appeals — Proposed orders.

(a) After the hearing officer receives all evidence, arguments, and, if applicable, post-hearing briefs, the record before the hearing officer shall be officially closed.

(b)(1) After the record before the hearing officer is closed and the hearing officer has

considered all of the evidence, the hearing officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees of the Arkansas Teacher Retirement System.

(2) The proposed order shall include:

(A) Findings of fact based exclusively on the evidence and testimony in the record of the hearing;

(B) Conclusions of law that shall be separately stated from the findings of fact; and

(C) A recommendation to the board.

(3)(A) The hearing officer shall provide the proposed order to the board via e-mail and via United States mail addressed to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(B) Upon receiving the proposed order, the system shall mail a copy of the proposed order to the member and, if applicable, the member's counsel via Certified, First Class, United States mail, with a copy to the Executive Director of the Arkansas Teacher Retirement System.

§ 13-113. Staff determinations — Appeals — Objections to proposed orders.

(a)(1) The member shall have the right to file a written statement of objections outlining any objections, exceptions, and arguments that the member determines should be considered by the Board of Trustees of the Arkansas Teacher Retirement System during the board's evaluation of the hearing officer's proposed order.

(2) A member shall not be permitted to introduce additional evidence or testimony in his or her statement of objections.

(b) A member's written statement of objections shall be delivered to the Arkansas Teacher Retirement System within twenty-one (21) calendar days of the member's receipt of the hearing officer's proposed order.

(c)(1) Counsel for the system may prepare a written response to any written statement of objections filed by the member.

(2) A copy of any response by the system shall be provided to the board and the member and, if applicable, the member's counsel, before the board meeting at which the hearing officer's proposed order is scheduled to be considered by the board.

§ 13-114. Staff determinations — Appeals — Consideration of proposed orders by the Board of Trustees of the Arkansas Teacher Retirement System.

(a) The Board of Trustees of the Arkansas Teacher Retirement System shall render a final determination on the hearing officer's proposed order.

(b)(1) The board's consideration of the hearing officer's proposed order shall be scheduled within a reasonable time to be heard, at a regular meeting of the board after the issuance of the proposed order.

(2) The board may call an emergency meeting to consider the hearing officer's proposed order if the situation warrants.

(3) The Arkansas Teacher Retirement System shall notify the member and, if applicable, the member's counsel in writing of the date, time, and location of the board meeting at which the board intends to consider the hearing officer's proposed order.

(c)(1) Before rendering a decision on the hearing officer's proposed order, the board may request that the member and, if applicable, the member's counsel make a brief statement to the board concerning facts and any arguments that the member wishes to present and respond to any questions from the board.

(2) The board's consideration of a brief statement and any responses to questions made by the member or, if applicable, the member's counsel shall not require the board to conduct another hearing and shall be based on the hearing previously conducted before the hearing officer.

(2) The chairman of the board shall have the final authority to set the amount of time any party may have to make a statement to the board.

(d)(1) Failure of a member to appear at the meeting of the board without prior notification shall result in the member waiving his or her right to be heard by the board.

(2)(A) A member may petition the board for another opportunity to address the board.

(B) The board may grant a member's petition for another opportunity to address the board if the board determines that the member's absence was for good cause.

(e)(1) After the board's consideration of the hearing officer's proposed order, the board shall either accept or reject all or part of the hearing officer's proposed order.

(2) The board may either accept the proposed order, reject the proposed order, or accept the proposed order as modified by the board.

(3) If the board rejects the proposed order or accepts the proposed order as modified by the board, the board may:

(A) Prepare its own written findings of fact and conclusions of law, separately state, and issue its own order based upon those findings and conclusions;

(B) Consider manifest injustice as a basis for any remedy; or

(C) Remand the matter in whole or in part to the hearing officer for reconsideration of additional findings of fact or conclusions of law or both additional findings of fact and conclusions of law.

(f) A quorum of votes of the board is necessary to approve any motion, resolution, or order under the board's consideration.

(g)(1) Following the board's decision on the hearing officer's proposed order, the board shall prepare a written final order on the member's appeal.

(2) The board's final order shall include findings of fact and conclusions of law, separately stated, that were relied upon by the board in formulating the final order.

(3) The board's final order shall be a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(4) A copy of the board's final order, including the board's findings of fact and conclusions of law, separately stated, shall be delivered by the Executive Director of the Arkansas Teacher Retirement System to the member and, if applicable, the member's counsel via Certified, First Class, United States.

§ 13-115. Staff determinations — Appeals — Settlement authority.

(a) With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules

concerning the staff determination and appeal process if the member's claim may be more expediently resolved using the manifest injustice process.

(b) The executive director may settle any claim in a manner mutually agreeable to the Arkansas Teacher Retirement System and the member at any time before the Board of Trustees of the Arkansas Teacher Retirement System issues its final order on the member's appeal.

(c) In settling any claim, the executive director shall not exceed the authority previously granted to him or her by the board.

(d) The executive director shall report any settlement that occurs after the hearing officer issues a proposed order to the board.

§ 13-116. Staff determinations — Appeals — Rights of members under the Arkansas Administrative Procedures Act.

(a) A member who receives an adverse final order from the Board of Trustees of the Arkansas Teacher Retirement System retains certain rights under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(b)(1) A member may file a petition for judicial review under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) A petition for judicial review of a final order of the board shall be filed by the member within thirty (30) days after service of the board's final order on the member.

(3) A member shall file the petition for judicial review in Pulaski County Circuit Court or the circuit court of any county in which the member resides or does business.

§ 13-117. Staff determinations — Appeals — Ex parte communications.

(a) The Arkansas Administrative Procedures Act, § 25-15-201 et seq., prohibits direct or indirect communications between the members and staff of the Arkansas Teacher Retirement System and a hearing officer or a member of the Board of Trustees of the Arkansas Teacher Retirement System concerning any issue of fact or law at issue in a member's appeal unless there has been notice providing all parties with an opportunity to participate in the communication.

(b) A hearing officer and a member of the board shall not consider any ex-parte or off-the-record evidence or statements made to them by the member or a staff member of the system in connection with a pending appeal.

(c) This section does not preclude communications by and between the hearing officer, system staff, and the board concerning minor scheduling and procedural matters necessary to timely and efficiently process and handle member appeals under the rules concerning the staff determination and appeal process.

§ 13-118. Manifest injustice.

(a) The Board of Trustees of the Arkansas Teacher Retirement System may waive or modify the impact of a rule, provision, or law applicable to the Arkansas Teacher Retirement System that does not violate a federal law or jeopardize the tax qualified status of the system in order to prevent a manifest injustice to a member, benefit participant, covered employer, or the system.

(b)(1) The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple

mistake.

(2) As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of the system, and to avoid or correct unduly harsh or unconscionable outcomes.

(c) In determining whether or not a manifest injustice exists, the system may consider:

- (1) The degree of fault of the system, benefit participant, or employer;
- (2) An ambiguity in the interpretation of the circumstances, rule, or law;
- (3) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;
- (4) Whether or not an expedited decision is in the public interest;
- (5) The fundamental fairness of a remedy in a particular situation; and
- (6) Whether or not the status quo would result in an unconscionable outcome.

(d)(1) The manifest injustice process shall not be used to address a change, omission, or error in the records of the system that may be corrected within the look-back period.

(2) The manifest injustice process may be used to correct a change, omission, or error in the records of the system discovered after the look-back period if the board determines that the time limitation imposed by the look-back period would cause a manifest injustice.

§ 13-119. Manifest injustice — Referrals.

(a) A manifest injustice referral shall be made to the Executive Director of the Arkansas Teacher Retirement System.

(b)(1) The following persons or entities may submit a manifest injustice referral to the executive director:

- (A) A member of the Board of Trustees of the Arkansas Teacher Retirement System;
- (B) A staff member of the system, including without limitation the executive director;
- (C) A benefit participant as defined by Arkansas Code § 24-7-202;
- (D) A covered employer; or
- (E) A guardian, fiduciary, or other interested party.

(2) A member of the Manifest Injustice Committee shall not be permitted to make a manifest injustice referral to the executive director.

(c)(1) The Arkansas Teacher Retirement System shall create and maintain a record of each manifest injustice referral submitted to the executive director and the resolution of the manifest injustice referral.

(2) The executive director shall submit all manifest injustice referrals to the committee.

(3) Each referral shall be given a number and a year designation by the committee.

§ 13-120. Manifest injustice — Authority of executive director.

(a) With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules concerning the staff determination and appeal process if the member's claim may be

more expediently resolved using the manifest injustice process.

(b)(1) The executive director is authorized to implement a resolution of a manifest injustice after a determination is made that a manifest injustice exists using the rules concerning the manifest injustice process.

(2)(A) The executive director may implement a resolution of a manifest injustice of up to five thousand dollars (\$5,000) of direct financial impact to the Arkansas Teacher Retirement System.

(B) The executive director shall provide the chair of the Board of Trustees of the Arkansas Teacher Retirement System with written notice of a manifest injustice determination and the proposed resolution before implementing the resolution if a resolution has a direct financial impact on the system in an amount exceeding five thousand dollars (\$5,000).

(c)(1) The executive director shall not waive a deadline that may apply in the law or rules applicable to the system.

(2) Only the Board of Trustees of the Arkansas Teacher Retirement System may waive a deadline.

(d)(1) The executive director shall provide a report to the board at least biannually that:

(A) Outlines the facts and circumstances of each manifest injustice referral;

(B) Describes findings and recommendations of the manifest injustice committee; and

(C) Provides and explains the resolution of the manifest injustice referral if a manifest injustice is found.

(2) The names of members or other information that is not material to the findings shall not be required in the report to the board.

§ 13-121. Manifest injustice — Manifest Injustice Committee.

(a) The Arkansas Teacher Retirement System's General Counsel and two (2) members of senior management designated by the Executive Director shall be the sole members of the Manifest Injustice Committee.

(b)(1) The committee shall review all manifest injustice referrals and shall meet on a reasonable schedule or as needed to review manifest injustice referrals.

(2) If a committee member has a conflict or otherwise cannot review or act on a manifest injustice referral due to absence, sickness, or work load, the committee member may appoint a representative from his or her supervised staff to review or act on the manifest injustice referral on the committee member's behalf.

(3) A majority vote of the committee shall constitute a recommendation on a manifest injustice referral.

(c)(1) The committee may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(2) A party to the manifest injustice referral is not required to provide any information or input requested by the committee.

(d)(1) The committee shall make a recommendation on the existence of a manifest injustice to the Executive Director of the Arkansas Teacher Retirement System based upon the committee's review of the manifest injustice referral.

(2) If the committee finds that a manifest injustice exists, then the committee shall propose and include in its recommendation a resolution of the manifest injustice.

§ 13-122. Manifest injustice — Review of recommendation.

(a)(1) The Executive Director of the Arkansas Teacher Retirement System shall review the manifest injustice referral and the Manifest Injustice Committee's basis for the recommendation.

(2)(A) The executive director may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(B) A party to the manifest injustice referral is not required to provide any information or input requested by the executive director.

(b)(1) The executive director may either accept the committee's recommendation or return the manifest injustice referral to the committee for further consideration if the executive director disagrees with the committee's recommendation.

(2)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice exists and the executive director accepts the recommendation.

(B) If the committee recommends that a manifest injustice exists and the executive director accepts the recommendation, the executive director may either adopt the resolution suggested by the committee or an alternative resolution that the executive director is authorized to implement.

(C) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice exists is not appealable under the rules concerning the staff determination appeal process or the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(3)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice does not exist, the executive director accepts the recommendation, and the recommendation is not appealed to the Board of Trustees of the Arkansas Teacher Retirement System using the rules concerning the staff determination appeal process.

(B)(i) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice does not exist may be appealed to the board using the rules concerning the staff determination appeal process if the manifest injustice referral involves:

(a) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(b) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(c) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(ii) A board member or staff member of the system shall not be permitted to appeal a committee's recommendation that is accepted by the executive director.

(iii) A committee's written recommendation shall not be considered a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(4)(A) If a manifest injustice referral is returned to the committee by the executive director, the manifest injustice committee shall reconsider the manifest injustice referral

and take into consideration any addition information provided by the executive director.

(B) The committee may maintain or amend its original recommendation after reconsidering a manifest injustice referral that is returned by the executive director.

(C)(i) If the committee maintains its original recommendation and the executive director does not accept the recommendation, the executive director may include the manifest injustice referral as an action item on the agenda of the board's next scheduled meeting for consideration and resolution by board.

(ii) If the manifest injustice referral was submitted by a person or entity who is not a board or staff member of the Arkansas Teacher Retirement System, the system shall send the person or entity written notice that:

(a) Provides the time and date on which the board intends to consider the manifest injustice referral;

(b) Advises the person or entity that the person or entity may present arguments to the board concerning the manifest injustice referral;

(c) Advises the person or entity that the system will send the person or entity a written final order of the board after the board meeting; and

(d) Advises that the board's final order shall be a final decision or order of the system that may be appealed by the person or entity under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(D) If the board finds that a manifest injustice does exist, the board may implement a resolution suggested by the system's staff or an alternative resolution.

(E) A final order of the board concerning a manifest injustice referral shall be considered the final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

Authority: Arkansas Code §§ 24-7-202, 24-7-205, and 25-15-201 — 24-15-219.

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